

JERSEY / JUDGMENT

AG v Canavan [2024]

JRC 060 (15 March 2024)

[2024] JRC 060

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JUDGMENT

THE COMMISSIONER:

Introduction

1.

Judgment

was handed down on 22 February (AG v Canavan

[2024] JRC 042) in respect of various matters preliminary to the Newton hearing on 26 and 27 February, arising in the prosecution of the Defendant on an indictment containing two counts, both relating to incidents on 3 September 2023 at Wellington Park Estate, the first count being one of grave and criminal assault and the second count alleging the Defendant to be in possession of an offensive weapon on the same occasion. The second count on the indictment was amended at the hearing to reflect the proper Article of the Firearms (Jersey) Law 2000 giving rise to the charge, namely Article 43(1) and not Article 41(1). 2. This judgment concerns a further procedural issue which arose on the first morning of the hearing. The prosecution sought leave to admit an expert report from Police Sergeant Lynn Lang. Sergeant Lang is a police officer who has, by her experience and courses undertaken, become an expert in drug trafficking in Jersey, and the content of the report was an analysis of various text messages and Facebook messages sent by the Defendant to the victim. The report was ostensibly signed on 21 February 2023, but given the various text messages took place after that date, it appears it must have been signed on 21 February 2024. At all events, the application to adduce the expert evidence came very late; notice of it was given to the defence only four days before the hearing was due to start and Advocate Blakeley objected to the admission of this evidence. 3. It is probably sufficient for the purposes of this judgment to say that a schedule of the text and Facebook messages was an agreed document in the bundle before the Court. As an example of early Facebook messages, the Defendant messaged on 2 September the victim to say this: "Ano ya don't drink we have couple of games of pool I've just double dropped." 4. The response

from the victim was: "Just got up bro your nuts I'm not going out till watched football focus... your on the Gerry s now lol. [emoji]" 5. To which the Defendant replied: "Yer a had some last night didn't go work today I'm on itttt." 6. And the victim responded: "Are no hear we go lol [emoji] your nuts lol fucking hell.... Why the no Ching.... I've not taken Gary in years mate.... lol." 7. There are several other text messages of a similar character. The purport of the expert's evidence was an analysis of these various messages - by way of example, Sergeant Lang considered that the reference in the conversation to taking two of something "double dropped" and to "Gerry s" was in common slang a reference to taking two ecstasy pills. The reference to "Ching" was a common slang reference for cocaine. 8. The Crown Advocate submitted that the expert evidence was necessary to enable the Jurats to understand the reality of the conversation that was taking place on Facebook or on the SMS messaging system - this was not simply a money dispute between the Defendant and the victim, but a dispute that arose out of a supply of drugs to the victim, which explains why the Defendant was so aggressive. As a matter of fairness to the prosecution, she contended that the evidence should go before the Jurats. The application came about so late because the Newton hearing had been brought forward so quickly at the Court's direction when the matter came up before the Court in December. The position until 13 December had been that the Crown thought there was a guilty plea entered without any particular basis of plea. It was only in the week that followed that it became clear what the Defendant's position really was, and therefore the work which would have been done immediately had the prosecution been faced with a not guilty plea had in fact not been commenced until much later. Whereas, sitting as a single judge in February, I had refused the Crown permission to adduce the expert evidence of Cellmark (see paragraphs 14 to 18 of the judgment of 22 February), here the Crown Advocate was not aware that there was any real dispute about the meaning of the text messages, and that it was highly unlikely that any conflicting expert evidence would be produced in relation to these messages. 9. Advocate Blakeley objected to the admission of the evidence. He said that the text messages had been available to the Crown since the Defendant had provided the PIN number to his mobile telephone in November 2023 and the messages could have led to the obtaining of expert evidence then. Instead, the first time the Defendant knew about this expert evidence was on 22 February. The Crown must have known for many weeks that it would be bringing this application. In addition, it was speculative that this was a drugs debt. He relied upon the case of AG v Maher

[2024] JRC 045 , a judgment delivered by the Deputy Bailiff on 23 February 2024. At paragraph 1, the Deputy Bailiff said this: "The Crown made an application to adduce bad character at the outset of the trial in this case. As indicated, such applications should be made well before trial and not on the first day of the trial. To make them on the day of the trial means that the jury or the Jurats having to wait unnecessarily, disrupts the flow of the evidence (in this case it was necessary for the application to take place during the evidence of a prosecution witness) and some bad character applications are not without their complexities." 10. Later, in the same judgment, the Deputy Bailiff said this at paragraph 23:

"... The Crown made their application to adduce the evidence late in the day and in some respects on the wrong basis - it was only in the Crown's speech in reply on their application to admit the evidence that they conceded that the Jurats would need to be satisfied that the Defendant knew of the contents of the packages to be imported in 2015 and / or 2018 for them to be able to take them into account when considering whether they were sure of the allegation on the indictment. The Crown agreed that if the Jurats were less than sure they would need to ignore those matters. There was a possibility that the trial could become dominated by consideration of the Defendant's state of mind in 2015 and 2018 in respect of which the Defendant had never been charged, let alone convicted. In the circumstances, I found that the admission of the evidence the Crown sought to adduce would, in the circumstances of this case, have such an adverse effect on the fairness of the proceedings that I ought not to admit it and accordingly it was not admitted." 11. Advocate Blakeley relied on these passages for the submission that the Crown was simply too late bringing the application in this case for the admission of the expert report. In that context I noted that the Plea and Directions Hearing form as executed on 10 January 2024 referred to outstanding forensic evidence relating to the knives found at the scene - which led to the application, which was refused, for the admission of expert evidence in relation to those knives - but there was no reference at that time to the intention on the part of the Crown to apply for expert evidence in relation to the text messages. 12. I allowed the application of the Crown to admit the expert report of Police Sergeant Lang, and reasons were reserved. This judgment contains those reasons. 13. As is clear from the extracts set out above, the content of the text messages obviously reveals that the messages contain some form of code. If not in code, the messages would be confusing, if not gibberish. Any Court considering those messages and trying to understand what they were about would have to conclude that there was some reason why they were structured as they were. Drug dealing is an obvious possibility, and, even if it were different with a jury, the fact is that the Jurats of this Court have seen text message exchanges of this kind on enough occasions in the past, where expert evidence has been produced, to be reasonably sure that these messages did indeed relate to drug dealing. To that extent, the evidence of Detective Sergeant Lang added clarity but was completely unsurprising. Indeed this was borne out later because Advocate Blakeley did not wish her to appear to give evidence and be cross-examined and it was sufficient that the report should be admitted to stand as evidence on its own. 14. The reasons for the debt allegedly owed by the victim to the Defendant form part of the overall case. They explain the aggression towards the victim from the Defendant, who would not be able to bring civil proceedings for recovery of the debt. To allow the evidence of Sergeant Lang to go before the Jurats would be to explain what was really going on in the background of the case. 15. Furthermore, the evidence of the Facebook and SMS messages was before the Court in any event, without objection from the Defendant. Even if unaware of the precise meaning of the different messages, there was in my view no doubt at all that the Jurats would have inferred, rightly, that the messages concerned drug dealing. 16. If it had been the case that the Defendant was asserting some prejudice, other than the natural

prejudice that arises from the building of the prosecution case, from this evidence coming forward at the last moment, it might have been different. However, although he was challenged by the Crown Advocate to come forward with the submission that alternative expert evidence might be needed, Advocate Blakeley made no such application and indeed was not able to point to any particular prejudice from the admission of the evidence. As Advocate Hall submitted, it would have made no difference if the report had been available three months earlier. There was no contention over it. 17. In making these remarks, I do not in any way depart from the views expressed by the learned Deputy Bailiff in AG v Maher . It is incumbent on the parties in a criminal case to make their applications on a timely basis and it is in principle undesirable to have admissibility arguments raised on the first day of a hearing, although sometimes it is unavoidable. Nevertheless, an assessment of fairness, which of course involves fairness to the prosecution as well as to the defence, which is part of the overriding objective, depends upon the facts of each case. One can well see on the facts recited by the learned Deputy Bailiff in Maher why that decision was entirely justifiable. Equally, there was no doubt in my judgment on the facts of the present case that the result of the Court's decision in December to fix the Newton hearing for the end of February did mean that there were a number of investigations and preparatory steps that had to be crowded into the seven weeks before the hearing, and as there was no prejudice in this particular case to the Defendant by the admission of the expert evidence, I considered in my discretion that it was the appropriate order to make. Authorities AG v Canavan

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